

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1120

Introduced by Bourne, 8

Read first time January 10, 2000

Committee: Health and Human Services

A BILL

- 1 FOR AN ACT relating to home inspections; to adopt the Home
- 2 Inspection Professional Licensing Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 31 of this act shall be known
2 and may be cited as the Home Inspection Professional Licensing Act.

3 Sec. 2. In order to safeguard life, health, and property
4 and to promote the public welfare, the profession of home inspector
5 is declared to be subject to regulation in the public interest. It
6 is unlawful for any person to (1) practice or offer to practice
7 home inspections for compensation in this state, (2) use in
8 connection with his or her name home inspector or otherwise assume
9 the title home inspector, or (3) advertise any title or description
10 tending to convey the impression that he or she is a licensed home
11 inspector, unless the person is duly licensed or exempt from
12 licensure under the Home Inspection Professional Licensing Act.
13 The practice of home inspection is a privilege granted by the state
14 through the board based on qualifications of the individual as
15 evidenced by a certificate of licensure which is not transferable.

16 Sec. 3. For purposes of the Home Inspection Professional
17 Licensing Act, the definitions found in sections 4 to 11 of this
18 act shall be used.

19 Sec. 4. Associate home inspector means a person who is
20 employed by a home inspector to conduct a home inspection of a
21 residential building under the direct supervision of the licensed
22 home inspector and who is licensed pursuant to the Home Inspection
23 Professional Licensing Act.

24 Sec. 5. Board means the Board of Professional Home
25 Inspectors.

26 Sec. 6. Client means any person who engages or seeks to
27 engage the services of a home inspector for the purpose of
28 obtaining inspection and a written report of the condition of a

1 residential building.

2 Sec. 7. Direct supervision means the degree of
3 supervision by a person overseeing the work of other persons by
4 which the supervisor has control over and professional knowledge of
5 the work being done.

6 Sec. 8. Good moral character means such character as
7 will enable a person to discharge the fiduciary duties of a home
8 inspector to his or her client and to the public for the protection
9 of the public health, safety, and welfare. Evidence of inability
10 to discharge such duties includes the commission of an offense
11 justifying discipline by the board.

12 Sec. 9. Home inspection means an inspection and written
13 evaluation of the following components of a residential building:
14 Heating system, cooling system, plumbing system, electrical system,
15 structural component, foundation, roof, masonry structure, exterior
16 and interior components, or any other related residential housing
17 component as determined by the board by rule and regulation.

18 Sec. 10. Home inspector means any person licensed as a
19 home inspector pursuant to the Home Inspection Professional
20 Licensing Act.

21 Sec. 11. Residential building means a structure
22 consisting of one to four family dwelling units.

23 Sec. 12. (1) The Board of Professional Home Inspectors
24 is created. The board shall consist of five members appointed by
25 the Governor. Each member shall be a resident of the state and
26 shall have been actively engaged in the practice of home inspection
27 in this state for at least five years immediately preceding
28 appointment, except that the members first appointed shall have

1 been actively engaged in the practice of home inspection in this
2 state for at least three years.

3 (2) For a period of one year after the effective date of
4 this act, the first five home inspectors appointed as members of
5 the board shall not be required, at the time of their first
6 appointment, to be licensed to practice home inspection.

7 (3) The Governor shall appoint each committee member for
8 a term of three years, except that the members first appointed, two
9 shall serve for terms of three years, two shall serve for terms of
10 two years, and one shall serve for a term of one year as designated
11 by the Governor. Upon the expiration of his or her term, a member
12 of the board shall continue to hold office until the appointment
13 and qualification of his or her successor. No person shall serve
14 as a member of the board for more than two consecutive terms. Any
15 vacancy shall be filled in the same manner as the original
16 appointment. The Governor may remove a member for cause.

17 (4) The members of the board shall elect a chairperson
18 and vice-chairperson during the first meeting of each year from
19 among the members.

20 (5) Four members shall constitute a quorum. The board
21 shall meet at least twice a year and may hold additional meetings
22 at the call of the chairperson or four members of the board as
23 necessary to discharge its duties. Each member shall receive a per
24 diem of sixty dollars and shall be reimbursed for actual and
25 necessary expenses as provided in sections 81-1174 to 81-1177.

26 Sec. 13. The board has the following duties:

27 (1) Administer and enforce the Home Inspection
28 Professional Licensing Act;

1 (2) Issue, renew, and refuse to grant licenses to home
2 inspectors and associate home inspectors;

3 (3) Suspend, revoke, or fail to renew the license of a
4 home inspector or an associate home inspector;

5 (4) Establish standards for continuing education;

6 (5) Adopt and publish a code of ethics and standards of
7 practice; and

8 (6) Adopt and promulgate rules and regulations to carry
9 out the act.

10 Sec. 14. In order to administer and enforce the Home
11 Inspection Professional Licensing Act, the board shall hire a
12 director who shall not be a member of the board and who shall serve
13 as secretary of the board. The board may hire additional staff,
14 rent office space, and acquire other facilities and equipment. The
15 board may contract for administrative assistance, including
16 facilities, equipment, supplies, and personnel that are required by
17 the board to carry out its responsibilities under the act.

18 Sec. 15. The members of the board shall be immune from
19 any civil action or criminal prosecution for initiating or
20 assisting in any lawful investigation of the actions of or any
21 disciplinary proceeding concerning a home inspector or associate
22 home inspector pursuant to the Home Inspection Professional
23 Licensing Act if such action is taken without malicious intent and
24 in the reasonable belief that it was taken pursuant to the powers
25 vested in the members of the board.

26 Sec. 16. The Home Inspector Regulation Fund is created.
27 The secretary of the board shall receive and account for all money
28 derived from the operation of the Home Inspection Professional

1 Licensing Act and shall remit the money to the State Treasurer for
2 credit to the fund. All expenses certified by the board as
3 properly and necessarily incurred in the discharge of duties,
4 including compensation and administrative staff, and any expenses
5 incident to the administration of the act relating to other states
6 shall be paid out of the fund. Warrants for the payment of
7 expenses shall be issued by the Director of Administrative Services
8 and paid by the State Treasurer upon presentation of vouchers
9 regularly drawn by the chairperson and secretary of the board and
10 approved by the board. At no time shall the total amount of
11 warrants exceed the total amount of fees collected under the act
12 and to the credit of the fund. Any money in the fund available for
13 investment shall be invested by the state investment officer
14 pursuant to the Nebraska Capital Expansion Act and the Nebraska
15 State Funds Investment Act.

16 Sec. 17. (1) Application for licensure as a home
17 inspector or an associate home inspector shall be made on a form
18 prescribed and furnished by the board.

19 (2) Application and licensure fees shall be established
20 by the board and shall accompany the application. The board shall
21 set original and reciprocal fees at an amount not to exceed three
22 hundred dollars. Application and licensure fees shall be in
23 addition to the examination fee which shall be set to recover the
24 costs of the examination and its administration.

25 (3) If the board denies the issuance of a certificate of
26 licensure to any applicant, the board shall retain the fee.

27 Sec. 18. (1) The board shall issue to any applicant who,
28 on the basis of education, experience, and examination, has met the

1 requirements of the Home Inspection Professional Licensing Act, a
2 certificate of licensure giving the licensee proper authority to
3 carry out the prerogatives of the act. The certificate of
4 licensure shall carry the designation Licensed Professional Home
5 Inspector or Licensed Associate Home Inspector. The certificate
6 shall give the full name of the licensee and the license number and
7 shall be signed by the chairperson of the board and the secretary
8 of the board.

9 (2) The certificate shall be prima facie evidence that
10 the person is entitled to all rights, privileges, and
11 responsibilities of a home inspector or associate home inspector
12 while the certificate of licensure remains unrevoked and unexpired.

13 (3) The board shall issue a certificate of licensure to
14 any person, upon submission of a written application and payment of
15 the application fee, who holds a valid license or certificate
16 issued by another state or possession of the United States or
17 District of Columbia which has standards substantially equivalent
18 to those of this state, as determined by the committee.

19 (4) The board shall issue a certificate of licensure to
20 any person, upon submission of a written application and payment of
21 the application fee, who is licensed in this state as an architect
22 or professional engineer if the person meets the requirements set
23 forth in subdivisions (1) and (3) of section 23 of this act.

24 Sec. 19. Certificates of licensure shall be issued for a
25 period of two years and be biennially renewable, except that the
26 board may, in order to avoid staggering the expiration dates
27 thereof, provide that those licenses first issued or renewed after
28 the effective date of this act shall expire or become void on a

1 date fixed by the board, not sooner than six months nor later than
2 twenty-nine months after the date issued. The secretary of the
3 board shall notify every person licensed under the Home Inspection
4 Professional Licensing Act of the date of the expiration of the
5 certificate of licensure and the amount of the fee required for
6 renewal. The notice shall be mailed to the licensee at the
7 last-known address on file with the board at least one month in
8 advance of the date of the expiration. An expired certificate may
9 be renewed under rules and regulations of the board regarding
10 requirements for reexamination and penalty fees. The board may
11 adopt a program of continuing education for licensees.

12 Sec. 20. The board may issue a new certificate of
13 licensure to replace any lost, destroyed, or mutilated certificate
14 upon payment of a fee not to exceed one hundred dollars.

15 Sec. 21. The board shall enforce the Home Inspection
16 Professional Licensing Act and the rules and regulations, including
17 enforcement against any unlicensed person. If any person refuses
18 to obey any decision or order of the board, the Attorney General or
19 the appropriate county attorney shall file an action for the
20 enforcement of the decision or order, including injunctive relief,
21 in the district court. After a hearing, the court shall order
22 enforcement of the decision or order, or any part thereof, if
23 legally and properly made by the board and, if appropriate,
24 injunctive relief.

25 Sec. 22. Except as provided in section 31 of this act,
26 an individual shall not directly or indirectly engage in the
27 practice of home inspection in the state or use the title home
28 inspector or associate home inspector or display or use any words,

1 letters, figures, titles, sign, card, advertisement, or other
2 symbol or device indicating or tending to indicate that he or she
3 is a home inspector or associate home inspector or is conducting
4 home inspections unless he or she is licensed under the Home
5 Inspection Professional Licensing Act. A licensee shall not aid or
6 abet any person not licensed under the act in conducting home
7 inspections, except a person exempted under subsection (7) of
8 section 31 of this act.

9 Sec. 23. A person applying to the board for initial
10 licensure as a home inspector shall submit an application
11 accompanied by the fee established by the board and present
12 satisfactory evidence that he or she:

13 (1) Has successfully completed high school or its
14 equivalent;

15 (2) Has been engaged as a licensed associate home
16 inspector for no less than one year, except that this requirement
17 shall not apply to applicants until January 1, 2002, and has
18 performed not less than two hundred fifty home inspections for
19 compensation; and

20 (3) Has passed an examination prescribed by the board.

21 At the board's discretion, subdivision (3) of this
22 section may be waived if the person has passed an examination
23 substantially equivalent to that prescribed by the board prior to
24 the effective date of this act. The board shall issue a
25 certificate of licensure to each applicant who is found to be of
26 good moral character and who satisfies the requirements set forth
27 in this section. Licensure shall be effective upon issuance.

28 Sec. 24. A person applying to the board for initial

1 licensure as an associate home inspector shall submit an
2 application accompanied by the fee established by the board and
3 present satisfactory evidence that he or she:

4 (1) Has successfully completed high school or its
5 equivalent;

6 (2) Has passed an approved course of study, as prescribed
7 by the board;

8 (3) Has performed not less than fifty home inspections in
9 the presence of a licensed home inspector; and

10 (4) Has passed an examination prescribed by the board.

11 At the board's discretion, subdivision (4) of this
12 section may be waived if the person has passed an examination
13 substantially equivalent to that prescribed by the board prior to
14 the effective date of this act. The board shall issue a
15 certificate of licensure to each applicant who is found to be of
16 good moral character and who satisfies the requirements set forth
17 in this section. Licensure shall be effective upon issuance.

18 Sec. 25. The board may refuse to grant or renew or may
19 suspend or revoke a home inspector license or an associate home
20 inspector license upon proof to the satisfaction of the board that
21 the applicant or holder of a license has:

22 (1) Disclosed any information concerning the results of
23 the home inspection without the approval of a client or the
24 client's representatives;

25 (2) Accepted compensation from more than one party for
26 the same service without the consent of all parties;

27 (3) Accepted or provided commissions or allowances,
28 directly or indirectly, from or to other parties dealing with his

1 or her client in connection with work for which the licensee is
2 responsible;

3 (4) Failed to disclose promptly to a client information
4 about any business interest of the licensee which may affect the
5 client in connection with the home inspection; or

6 (5) Violated the Home Inspection Professional Licensing
7 Act.

8 Sec. 26. A licensee may apply to the board to be placed
9 on inactive status. An applicant for inactive status must follow
10 the procedures set by the board. A licensee who is granted
11 inactive status is not subject to the license renewal requirements
12 during the period the licensee remains on inactive status. A
13 licensee whose application is granted and placed on inactive status
14 may apply to the board to be reinstated to active status at any
15 time. The board may set conditions for reinstatement to active
16 status. An individual who is on inactive status and applies to be
17 reinstated to active status must comply with the conditions set by
18 the board.

19 Sec. 27. Any person who performs any of the following
20 actions is guilty of a Class I misdemeanor for the first offense
21 and a Class IV felony for the second or any subsequent offense:

22 (1) Conducts or offers to conduct a home inspection in
23 this state without being licensed in accordance with the Home
24 Inspection Professional Licensing Act;

25 (2) Knowingly and intentionally employs or retains a
26 person to conduct home inspections in this state who is not
27 licensed in accordance with the act except as exempted under
28 section 31 of this act;

1 (3) Presents or attempts to use the certificate of
2 licensure as a home inspector or associate home inspector of
3 another person;

4 (4) Gives any false or forges evidence of any kind to the
5 board or to any member of the board in obtaining or attempting to
6 obtain a certificate;

7 (5) Falsely impersonates any other licensee of like or
8 different name;

9 (6) Attempts to use an expired, suspended, revoked, or
10 nonexistent certificate of licensure or who practices or offers to
11 practice when not qualified;

12 (7) Falsely claims that he or she is licensed under the
13 act; or

14 (8) Otherwise violates the act.

15 Sec. 28. Charges against any person involving any matter
16 coming within the jurisdiction of the board shall be in writing and
17 shall be filed with the board. The charges, at the discretion of
18 the board, shall be heard within a reasonable time in accordance
19 with the rules and regulations and may be heard through the use of
20 a hearing officer. The accused shall have the right to appear
21 personally with or without counsel, to cross-examine adverse
22 witnesses, and to produce evidence and witnesses in his or her
23 defense. The board shall set the time and place for the hearing
24 and shall cause a copy of the charges, together with a notice of
25 the time and place fixed for the hearing, to be sent by registered
26 mail to the accused, at his or her last-known business or residence
27 address known to the board, at least thirty days before the
28 hearing. If after the hearing the board finds the accused has

1 violated the Home Inspection Professional Licensing Act or any
2 rules or regulations, it may issue any order or take any action
3 described in section 29 of this act. If the board finds no
4 violation, it shall enter an order dismissing the charges. If the
5 order revokes or suspends a license, the board shall notify, in
6 writing, the Secretary of State and the clerk of the city or
7 village in the state where the person has a place of business, if
8 any. The board may reissue a license to any person whose license
9 has been revoked. Application for the reissuance of a license
10 shall be made in such a manner as the board directs and shall be
11 accompanied by a fee established by the board.

12 Sec. 29. (1) The board may after a hearing, by majority
13 vote, take any or all of the following actions, upon proof
14 satisfactory to the board that a person has violated the Home
15 Inspection Professional Licensing Act or any rules or regulations.
16 The following actions may be taken against a licensee upon a
17 two-thirds majority vote of the board:

18 (a) Issuance of censure or reprimand;

19 (b) Suspension of judgment;

20 (c) Placement of the licensee on probation;

21 (d) Placement of a limitation or limitations on the
22 licensee and upon the right of the licensee to practice the
23 profession to such extent, scope, or type of practice for such time
24 and under such conditions as are found necessary and proper;

25 (e) Imposition of a civil penalty not to exceed ten
26 thousand dollars for each offense. The amount of the penalty shall
27 be based on the severity of the violation;

28 (f) Entrance of an order of revocation, suspension, or

1 cancellation of the certificate of licensure;

2 (g) Issuance of a cease and desist order;

3 (h) Imposition of costs as in an ordinary civil action in
4 the district court, which may include reasonable attorney's fees
5 and hearing officer fees incurred by the board and the expenses of
6 any investigation undertaken by the board; or

7 (i) Dismissal of the action.

8 (2) In hearings under this section, the board may take
9 into account suitable evidence of reform.

10 (3) Civil penalties collected under subdivision (1)(e) of
11 this section shall be remitted to the State Treasurer for credit to
12 the permanent school fund. All costs collected under subdivision
13 (1)(h) of this section shall be remitted to the State Treasurer for
14 credit to the Home Inspector Regulation Fund.

15 Sec. 30. The time for commencement of disciplinary
16 action for breach of duty arising from a home inspection report
17 shall not exceed one year from the date of the inspection.

18 Sec. 31. The Home Inspection Professional Licensing Act
19 shall not apply to:

20 (1) Any person who is employed as a code enforcement
21 official by the state or a political subdivision thereof when
22 acting within the scope of that government employment;

23 (2) Any person regulated by the state as an architect, a
24 professional engineer, an electrical contractor, or a master
25 plumber who is acting within the scope of practice of his or her
26 profession or occupation;

27 (3) Any real estate broker, associate broker, or
28 salesperson who is licensed by the state and acting within the

1 scope of his or her profession;

2 (4) Any licensed, certified general, or certified
3 residential real estate appraiser who is acting within the scope of
4 his or her profession;

5 (5) Any person regulated by the state as an insurance
6 adjuster who is acting within the scope of his or her profession;

7 (6) Any person certified or registered as ventilation
8 contractor who is acting within the scope of his or her profession;
9 or

10 (7) Any person performing home inspections under the
11 supervision of a licensed home inspector for the purpose of meeting
12 the requirements for licensure as an associate home inspector.